

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-CV-144-BO(2)

DERRICK ALLEN,)
)
 Plaintiff,)
)
 v.) ORDER
)
)
)
 TOWN OF CARY'S POLICE)
 DEPARTMENT, POLICE CHIEF TONI)
 DEZOMITS & OFFICER N. COFFEY,)
)
 Defendants.)

This matter is before the Court on the Memorandum and Recommendation ("M&R") of United States Magistrate Judge Kimberly A. Swank [DE 16] regarding frivolity review pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff has filed an objection to the M&R. For the reasons discussed below, the Court adopts the M&R in its entirety and the claims against Town of Cary Police Department and Chief of Police Toni DeZomits are dismissed as frivolous.

A claim proceeding *in forma pauperis* may be dismissed at any time if it is frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A plaintiff proceeding *in forma pauperis* must "meet certain minimum standards of rationality and specificity," and delusional or fantastic claims which are clearly baseless are subject to dismissal. *Adams v. Rice*, 40 F.3d 72, 74 (4th Cir. 1994). A court may also dismiss all or any part of a complaint which fails to state a claim upon which relief can be granted or which seeks money damages from a defendant immune from such recovery. 28 U.S.C. § 1915(e)(2)(B).

A district court is required to review an M&R *de novo* if a party specifically objects to it or in cases of plain error. 28 U.S.C. § 636(b)(1)(B); *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). The district court is only required to make a *de novo* determination of those specific findings to which the plaintiff has actually objected. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). *De novo* review is not required when an objecting party makes only general or conclusory objections that direct a court to a specific error in the magistrate judge's recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Further, when "objections to strictly legal issues are raised and no factual issues are challenged, *de novo* review may be dispensed with." *Id.*

Plaintiff has objected to the M&R's recommendations to dismiss the claim as against the Town of Cary Police Department and Chief of Police Toni DeZomits. The objections raised by plaintiff to the M&R are to legal issues. The Court has reviewed the legal recommendations of Magistrate Judge Swank and finds no plain error.

CONCLUSION

Accordingly, for the foregoing reasons, the M&R of Judge Swank is ADOPTED in its entirety and the claims against Town of Cary Police Department and Chief of Police Toni DeZomits are DISMISSED.

SO ORDERED.

This the 21 day of September, 2020.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE